

State Board of Elections Policy 2008-006

A meeting of the Virginia State Board of Elections was held on September 8, 2008 whereby a policy was proposed and approved by the Board:

Substantial Compliance as it applies to the Statement of Voter

WHEREAS, the 2005 General Assembly session failed to enact proposed technical legislation concerning substantial compliance in completing the *Statement of Voter* when voting an absentee ballot;

WHEREAS, the Office of the Attorney General in response to the State Board of Elections' request issued an official opinion on the Board's role in promulgating instructions in regard to the issue of substantial compliance as it applies to the *Statement of Voter* stating as follows:

"It is my opinion that 42 U.S.C.A. §1971 (a)(2)(B) does not conflict with the specific requirement of completion of the voter statement required by §24.2-706 and would not preempt the Commonwealth from requiring such a statement. It is further my opinion that the State Board of Elections has the authority to adopt standards and instructions for use by local election officials in determining what constitutes an error or omission in completion of the voter statement that is not material in determining whether an individual is qualified to vote in an election."

WHEREAS, the State Board at its meeting on March 22, 2006, approved instructions to guide registrars and electoral board members on what errors or omissions would render the ballot void;

WHEREAS, the Code of Virginia, §24.2-706. **Duty of general registrar and electoral board on receipt of application; statement of voter, states in part:**

"Statement of Voter."

"I do hereby state, subject to felony penalties for making false statements pursuant to § 24.2-1016, that my FULL NAME is (last, first, middle); that I am now or have been at some time since last November's general election a legal resident of (STATE YOUR LEGAL RESIDENCE IN VIRGINIA including the house number, street name or rural route address, city, zip code); that I received the enclosed ballot(s) upon application to the registrar of such county or city; that I opened the envelope marked 'ballot within' and marked the ballot(s) in the presence of the witness, without assistance or knowledge on the part of anyone as to the manner in which I marked it (or I am returning the form required to report how I was assisted); that I then sealed the ballot(s) in this envelope; and that I have not voted and will not vote in this election at any other time or place.

Signature of Voter
Date
Signature of witness "

WHEREAS, the current policy reads as follows:

Policy and procedures for when the *Statement of Voter* contains omissions or has been completed in error.

What to do if the Statement of Voter contains omissions or has been completed in error?

The ballot should be rendered as void, if the voter:

- Omitted the signature of the voter
- Omitted the signature of the witness
- Omitted the signature of the voter and the signature of the witness

or any combination of the aforementioned scenarios.

The ballot should not be rendered as void, if the voter:

- Has not listed the names specifically in the order of last, first and middle name
- Has listed a middle initial or maiden name, instead of the full middle name
- Has omitted the street identifier, such as the term "road" or "street" when filling in the legal residence
- Has omitted the date of the signature of the voter

or any combination of the aforementioned scenarios.

now therefore be it

RESOLVED, by the State Board of Elections under its authority to issue rules and regulations to promote the proper administration of election laws and obtain uniformity in the administration of elections pursuant to § 24.2-103, that

WHEREAS, the proposed policy would add: the ballot should not be rendered void, if the voter has omitted the zip code or made any other error the Electoral Board determines is not material to determining whether the individual is qualified to vote in the election.

WHEREAS, this change is being introduced as it has been suggested that the omission of the zip code does not impede the registrar/electoral board ability to determine whether the applicant is qualified to vote. These additions are underlined and listed in the full text of the revised Policy and Procedures set forth below.

Policy and procedures for when the *Statement of Voter* contains omissions or has been completed in error.

What to do if the Statement of Voter contains omissions or has been completed in error?

The ballot should be rendered as void, if the voter:

- Omitted the signature of the voter
- Omitted the signature of the witness
- Omitted the signature of the voter and the signature of the witness

or any combination of the aforementioned scenarios. These omissions are always material.

The ballot should not be rendered as void, if the voter:

- Has not listed the names specifically in the order of last, first and middle name
- Has listed a middle initial or maiden name, instead of the full middle name
- Has omitted the street identifier, such as the term "road" or "street" when filling in the legal residence
- Has omitted the date of the signature of the voter
- Has omitted the zip code

or any combination of the aforementioned scenarios.